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IN THE MATTER OF QWEST CORPORATIONS
COMPLIANCE WITH SECTION 252(e) OF THE
TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. RT-00000F-02-0271

IN THE MATTER OF US WEST
COMMUNICATIONS, INC.'S COMPLIANCE
WITH SECTION 271 OF THE
TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. T-00000A-97-0238

PROCEDURAL ORDER**BY THE COMMISSION:**

On March 8, 2002, AT&T Communications of the Mountain States, Inc. and TCG Phoenix ("TCG") (collectively "AT&T"), filed a Motion with the Arizona Corporation Commission ("Commission") to reopen the record in the Section 271 investigation to determine whether Qwest is complying with Section 271 of the Telecommunications Act of 1996 ("1996 Act") given its having not filed certain agreements with the Commission under Section 252(e) of the 1996 Act.

By Procedural Order dated April 18, 2002, the Hearing Division denied AT&T's Motion to Reopen Section 271, and established a procedural schedule for reviewing the un-filed agreements in a new Section 252(e) docket (Docket No. RT-00000F-02-0271).

Pursuant to the Procedural Order, on June 7, 2002, Staff filed its Report and Recommendation on Qwest's compliance with Section 252(e). Subsequently, issues arose concerning whether the un-filed agreements and Qwest's agreements with certain CLECs not to participate in the Section 271 proceeding might have adversely affected the Section 271 regulatory process. As a result, Staff conducted further discovery in the Section 271 docket.

Section 252(e)

By Procedural Orders dated July 9, 2002 and August 15, 2002, the Hearing Division directed Commission Staff to file recommendations for further action concerning its investigation into Qwest

1 Corporation's compliance with Section 252(e) of the 1996 Act, and directed interested parties to file
2 written comments to Staff's recommendations by August 29, 2002.

3 Staff filed its Supplemental Staff Report and Recommendations on Qwest's compliance with
4 Section 252(e) on August 14, 2002.

5 AT&T, WorldCom, Inc. ("WorldCom"), Qwest and the Residential Utility Consumer Officer
6 ("RUCO") filed comments to the Staff Report.

7 On September 4, 2002, Staff filed a Reply to the Comments of WorldCom, AT&T and
8 RUCO.

9 On September 6, 2002, RUCO file a Motion for Procedural Conference to resolve conflicting
10 views on the scope of the hearing.

11 By Procedural Order dated September 11, 2002, the Hearing Division convened a Procedural
12 Conference on September 19, 2002, for the purpose of clarifying the parties' positions as expressed in
13 their written comments and to establish a time-frame for proceeding with a hearing as well as any
14 other issues related to this matter the parties wish to bring to the attention of the Commission.

15 During the September 19, 2002 Procedural Conference, Staff explained its recommendations
16 for proceeding in the Section 252 docket. Staff proposes a Phase A that would determine the
17 appropriate standard that triggers Qwest's filing obligation,¹ the specific agreements that Qwest
18 should have filed, why Qwest did not file the agreements and any appropriate monetary and non-
19 monetary penalties. Staff proposes a Phase B which would look at individual carrier opt-in issues
20 that may arise as a result of agreements identified in Phase A.

21 Staff believes the parties should have the right to comment on the Section 252 issue and the
22 weight it should be given in the Public Interest phase of the Section 271 proceeding . However, Staff
23

24 ¹ On October 4, 2002, the FCC issued its Memorandum Opinion and Order on Qwest's Petition for Declaratory
25 Ruling on the Scope of the Duty to File and Obtain Approval of Negotiated Contractual Arrangements under Section
26 252(a)(1). In that Order, the FCC found that "an agreement that creates an ongoing obligation pertaining to resale,
27 number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network
28 elements, or collocation is an interconnection agreement that must be filed pursuant to section 252(a)(1)." The FCC
further held, "[w]e encourage state commissions to take action to provide further clarity to incumbent LECs and
requesting carriers concerning which agreements should be filed for their approval. At the same time, nothing in this
declaratory ruling precludes state enforcement action relating to these issues." The FCC's Order encompasses "previously
unfiled interconnection agreements including those that are no longer in effect."

1 does not believe the Section 252 proceeding needs to be completed prior to the conclusion of the
2 Section 271 investigation.

3 RUCO advocates a comprehensive hearing that is not limited to Section 252. RUCO believes
4 the relevant issue is whether Qwest made misrepresentations to the Commission, and as a result,
5 discriminates against CLECs. As a result of its initial investigation, RUCO claims Qwest's wrong-
6 doing involves accounting irregularities and possible anti-trust and potentially criminal conduct.
7 RUCO believes a thorough investigation will take time and recommends that a consolidated and
8 comprehensive hearing commence in February 2003.

9 AT&T supports Staff's proposal for proceeding with Section 252(e), but believes that the
10 Section 252(e) investigation needs to conclude prior to making a final determination in the public
11 interest portion of the Section 271 proceeding. AT&T argues that ability to comment on the 252
12 Proceedings is meaningless if the Section 271 proceeding concludes prior to the Section 252(e)
13 matter. AT&T is concerned that RUCO's proposal to expand the scope of the hearing beyond the
14 fundamental Section 252(e) issues, may unnecessarily prevent the agreements from being filed which
15 may delay the CLECs' ability to opt into them.

16 WorldCom agreed that Staff's proposed procedure for the Section 252(e) enforcement action
17 is reasonable, as long as the Section 252(e) hearing would not preclude full-blown investigation and
18 audits as requested by RUCO. WorldCom also agrees with AT&T that whether or not the Section
19 252(e) and Section 271 cases are consolidated, they are so intertwined that the Section 252(e)
20 proceeding should be concluded before the Section 271 recommendation is sent to the FCC.

21 Qwest agrees with Staff's proposed procedures for the Section 252(e) proceeding. Qwest also
22 agrees with Staff that the Section 252 matter does not have to be resolved prior to a final
23 recommendation in the Section 271 matter, but believes that a quick resolution is important. Qwest
24 asserts that it could file testimony concerning the Section 252 issues within two weeks of a
25 Procedural Order. Qwest argued that if the Commission wanted to investigate allegations of
26 accounting irregularities or anti-trust matters as suggested by RUCO, that it had the authority to do
27 so, but should open another docket as these are separate issues from those appropriately considered
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1 under Section 252 or Section 271.

2 Section 271 Investigation

3 On October 4, 2002, Staff filed its Supplemental Staff Report and recommendation concerning
4 its investigation into the effect of the "nonparticipation" agreements on the Section 271 process.

5 On October 15, 2002, AT&T, Worldcom, RUCO and Qwest filed Comments on Staff's
6 Supplemental Report in the Section 271 docket.

7 Staff concluded that there were omissions in the Section 271 record due to the
8 nonparticipation of at least two CLECs. As a result, Staff conducted workshops in July 2002, to
9 allow these parties to present evidence on any issues they had which remained unresolved. Staff
10 plans to issue a Supplemental Report addressing the issues raised in the July 2002 workshops. Staff
11 concludes in its October 4, 2002, Supplemental Report that there has been an initial showing that
12 Qwest's "nonparticipation" agreements tainted the Section 271 process. Staff recommends opening a
13 sub docket to the Section 271 investigation to address remedies against Qwest for its interference
14 with the Section 271 regulatory process. Staff states that it is important that the Section 271 sub-
15 docket be concluded before the Commission makes its final recommendation to the FCC.

16 RUCO continues to argue for a consolidated proceeding, but states that in any case, the
17 Section 271 investigation cannot conclude prior to resolution of the Section 252(e) matter.

18 AT&T concurs with Staff's conclusion that Qwest interfered with the Section 271 regulatory
19 process and does not oppose Staff's recommendation to open a sub-docket to consider remedies.
20 AT&T disagrees with Staff that the July 2002 Workshops resolve all Section 271 Checklist Item
21 issues, and will be filing comments on Staff's conclusions on the July 2002 workshops after Staff
22 files its Supplemental Report.

23 Qwest states it agrees with Staff that any concerns regarding an incomplete Section 271
24 record have been adequately addressed in the July 2002 workshop and by the forth-coming Staff
25 Report. Qwest states that when it considers the Supplemental Staff Report, the Commission will be
26 able to decide what actions, if any, to take in light of the concerns expressed in the workshop. Thus,
27 Qwest argues no further proceedings are required at this time with respect to the impact, if any, the
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1 agreements had on the Section 271 process. Qwest concurs with Staff's recommendation to open a
2 sub-docket to the Section 271 investigation to address what, if any, monetary or non-monetary
3 penalties are appropriate for Qwest's alleged interference with the Section 271 process.

4 Qwest argues that "without diminishing the importance of the issues underlying the un-filed
5 agreements case, they are not appropriate matters for consideration as part of the Section 271 public
6 interest inquiry." Qwest asserts the public interest phase of the Section 271 inquiry should focus on
7 whether the telecommunications market is open on a going-forward basis and whether future
8 interLATA competition is in the public interest, and not on past conduct.

9 Resolution

10 The Section 252 issues concern whether Qwest violated its obligation to file certain
11 agreements with this Commission and if it did, what remedies are appropriate. The scope of the
12 hearing in the Section 252(e) proceeding will determine when Qwest should file agreements with
13 CLECs for Commission approval, why Qwest failed to file certain agreements, whether Qwest knew
14 or should have known the appropriate criteria at the time it failed to file the agreements, which
15 agreements should be filed under the standard and whether Qwest should be subject to monetary
16 and/or non-monetary penalties if it violated the standard. In addition, the Commission should
17 determine if Qwest's conduct violated any other law, Commission Order or rule.

18 The Section 271 issues concern whether Qwest's agreements with certain CLECs not to
19 participate in the Section 271 proceeding interfered with the regulatory process and whether the
20 Commission should impose monetary or non-monetary penalties as a result. Although the matters
21 share certain facts in common, the nature of the inquiry in each is distinct and the remedies the
22 Commission may consider with respect to potential violations are also distinct. At this time, we
23 agree with Staff that the Section 252(e) investigation and the Section 271 investigation do not need to
24 be consolidated.

25 Staff believes that the parties should have the right to supplement the record in the public
26 interest phase of the Section 271 inquiry based on Qwest's failure to file certain agreements. We
27 accepted Staff's recommendation to open a separate docket for the Section 252(e) investigation with
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1 the condition that the parties would be able to reference the findings in that docket in the Section 271
2 matter. Thus, it is only logical that the Section 252(e) investigation should proceed, and Phase A
3 conclude, prior to the conclusion of the investigation into the public interest portion of the Section
4 271 investigation, as the findings may be relevant to our ultimate recommendation to the FCC. We
5 are not convinced at this point that the public interest analysis of this Commission should be limited
6 as suggested by Qwest.

7 We accept Staff's recommendation to open a sub-docket to the Section 271 proceeding for the
8 purpose of determining what actions the Commission should pursue with respect to the allegations
9 that Qwest interfered in the Section 271 regulatory process. Staff should cause such docket to be
10 opened and file procedural recommendations for further Commission action.

11 Staff will be issuing a Supplemental Report in the Section 271 proceeding addressing the
12 issues raised in the July 2002 Workshops. Consistent with our previous Procedural Orders, interested
13 parties will have ten days to file comments on Staff's Supplemental Report. Staff will then file a
14 Final Supplemental Report addressing the parties' comments. If there are disputed issues, the matter
15 will be submitted to the Hearing Division for resolution. We believe that this process, as well as our
16 inquiry in a Section 271 sub-docket, can proceed simultaneously with the resolution of the Section
17 252(e) matter.

18 IT IS THEREFORE ORDERED that that a hearing to determine if Qwest violated its
19 obligation to file certain interconnection agreements with the Commission pursuant to Section 252(e),
20 or other state law or Commission Order or rule, and to consider any appropriate monetary and non-
21 monetary penalties and remedies, shall commence on January 29, 2003, at 10:00 a.m., or as soon
22 thereafter as is practical, at the Commission's offices, 1200 W. Washington, Phoenix, Arizona.

23 IT IS FURTHER ORDERED that Qwest shall reduce to writing and file direct testimony and
24 related exhibits no later than December 2, 2002.

25 IT IS FURTHER ORDERED that Intervenor and Staff shall file direct testimony and
26 exhibits no later than January 3, 2003.

27 IT IS FURTHER ORDERED that Qwest shall file any rebuttal testimony and related exhibits
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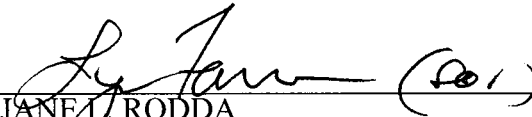
no later than January 17, 2003.

IT IS FURTHER ORDERED that a Procedural Conference shall commence on January 23, 2003 at 10:00 a.m., or as soon thereafter as is practical, at the Commission's offices, 1200 West Washington Street, Phoenix, Arizona 85007.

IT IS FURTHER ORDERED that Staff shall cause to be opened a sub-docket to the Section 271 investigation for the purpose of accepting comments and recommendations concerning the appropriate measures the Commission should take with respect to the allegations that Qwest interfered in the Section 271 regulatory process. Staff should file its recommendations for further Commission action by December 2, 2002. Interested parties shall file Responsive comments by December 16, 2002, and Staff shall file Reply comments by December 30, 2002.

IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

DATED this 7th day of November, 2002.


JANE L. RODDA
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered
this 7th day of November, 2002, to

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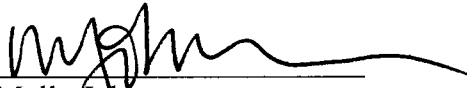
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